amount of natamycin. See claim 1. The tablet form of natamycin overcomes the disadvantages found in the prior art use of natamycin in powder form.

Ruttan describes a tablet for preserving milk which is not intended for human consumption because it does not consist of physiologically acceptable components. See col. 2, lines 1-11. The tablets described by Ruttan are intended to be used to preserve milk samples for laboratory analysis. See col. 1, lines 9-12. The main ingredient of the Ruttan tablet is a well known and much used preservative, 2-bromo-2-nitropropane-1,3-diol. See col. 1, lines 35-60, and col. 2, lines 1-16. In order to improve the effects and overcome the drawbacks of using the 2-bromo-2-nitropropane-1,3-diol preservative, Ruttan describes the combination of the preservative with a second preservative, i.e. natamycin. Id.

Ruttan does not teach or suggest or provide any motivation to omit the main effective ingredient (2-bromo-2-nitropropane-1,3-diol) from the tablet of Ruttan and maintaining only physiologically acceptable components, including the auxiliary agent (natamycin). Further, Ruttan's tablet is does not consist of physiologically acceptable components. See col. 2, lines 1-11. Since the tablets are intended for preservation of milk samples for laboratory analysis and do not consist of physiologically acceptable components, it would not have been "obvious to eliminate the non physiologically acceptable ingredients from the tablet of Ruttan" "in the event of a change in the rules that restrict[] the use of natamycin in foods." See Office Action at pages 2-3.

Since claims 5, 6, and 12 depend from claim 1 and share the same features, dependent claims 5, 6, and 12 are patentable over Ruttan. Applicants respectfully request reconsideration and withdrawal of this rejection.

Berry in view of Ruttan

The Examiner has rejected claims 1-8 under 35 U.S.C. §103(a) as being unpatentable over Berry ("Natamycin for Shredded Cheese." *Daily Foods*, March 1999, p. 45) ("Berry") in view of Ruttan. See Office Action at page 3. Claims 2-8 depend from independent claim 1.

Applicants have discovered a natamycin dosage form that includes a tablet. The tablet includes physiologically acceptable components and contains an effective food preserving amount of natamycin. See claim 1.

The Examiner contends that "[i]t would have been obvious to formulate and sell a concentrated amount of natamycin for dilution and use in cheese processing in order to improve the speed and accuracy of weighing natamycin in a cheese process." See Office Action at page 3.

Applicants respectfully remind the Examiner that "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in that art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper" (emphasis added by Applicants) (citing *In re McLaughlin* 443 F.2d 1392, 1395 (CCPA 1971)). See MPEP 2145, paragraph X. A.

As previously described, Ruttan discloses a tablet for preserving milk samples for laboratory analysis. See col. 1, lines 9-12. The main ingredient of the Ruttan tablet is a well known preservative, 2-bromo-2-nitropropane-1,3-diol. See col. 1, lines 35-60, and col. 2, lines 1-16). Ruttan describes the combination of the 2-bromo-2-nitropropane-1,3-diol with a second preservative, i.e. natamycin, in order to overcome the drawbacks of using 2-bromo-2-nitropropane-1,3-diol. Id. As previously discussed, Ruttan does not suggest or provide any motivation to omit the main effective, non-physiologically acceptable component, 2-bromo-2-nitropropane-1,3-diol, from the tablet. Thus, a person skilled in the art reading Ruttan would believe that he had to use the tablet of Ruttan which consists of non-physiologically acceptable components such as 2-bromo-2-nitropropane-1,3-diol to obtain the preservative effect on a food product.

Berry does not remedy this defect in Ruttan. Berry describes the direct application of a dry powdered natamycin blend to shredded cheese. Berry does not suggest or provide any motivation to provide a natamycin dosage form that includes a tablet which consists of physiologically acceptable components. See claim 1. In other words, the teachings of Ruttan and Berry could not motivate a person of skill in the art to provide a natamycin dosage form that includes a tablet which consists of physiologically acceptable components. Accordingly, claim 1 and claims that depend therefrom are patentable over the above-cited references. Applicants respectfully request the withdrawal of the rejection.

Ang

The Examiner has rejected claims 1-13 under 35 U.S.C. §103(a) as being unpatentable over EP 1 157 618 to Ang ("Ang"). See Office Action at pages 3-4. Claims 2-13 depend from independent claim 1.

Ang describes a "food ingredient composition [which] contains a particulate anti-caking material at least partially encapsulated with an encapsulating agent, and a direct action anti-mycotic material coated on particles of the encapsulated anti-caking material." See Abstract on page 1. The natamycin described in Ang is on the outer surface of the particles so as to be in direct contact with the solid food product, which is to be preserved. See page 3, paragraph 11. Applicants have discovered a natamycin dosage form that includes a tablet which consists of physiologically acceptable components. The tablet includes physiologically acceptable components and contains an effective food preserving amount of natamycin. See claim 1. Most of the natamycin is within the tablet. See page 4, lines 32-34 of the specification.

The encapsulated anti-caking agent of Ang is dispersed within a food product so that the natamycin-covered surface is in effective contact with the food. Ang does not suggest or provide any motivation to provide a natamycin dosage form that includes a tablet which consists of physiologically acceptable components. Ang further does not suggest providing a natamycin tablet for direct addition to food products nor is there any suggestion in Ang for using a tablet for providing a fixed amount of natamycin in a spray solution. As such, claim 1 and claims that depend therefrom are patentable over Ang. Applicants respectfully request reconsideration and withdrawal of this rejection.

CONCLUSION

For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance.

Should any further fees be required by the present Amendment, the Commissioner is hereby authorized to charge Deposit Account **19-4293**.

If, for any reason, a telephonic conference with the Applicant would be helpful in expediting prosecution of the instant application, the Examiner is invited to call Applicant's Attorney at the telephone number provided below.

Respectfully submitted,

Date: 3/16/06

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